?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 19.11.2018

*CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

+W.P.(MD)No.854 of 2009
and
M.P.(MD)No.1 and 2 of 2009

#The Special Officer
A.2159, Vadugambady Primary
Agricultural Co~operative Bank Ltd.,
Vedasandur Taluk,
Dindigul District. ... Petitioner
Vs.

$1.The Presiding Officer,
Deputy Commissioner Labour,
Dindigul.

2.M.Vellaichamy ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the impugned order passed by the first respondent dated 28.12.2007 in Case No.TNSE (A) 10 of 2007 and quash the same.

!For Petitioner : Mr.V.O.S.KalaiSelvam

^For R1 : Mr.Aayiram K.Selvakumar
Additional Government Pleader

For R2 : Mr.C.Mayil Vahana Rajendran

:ORDER

The second respondent herein was employed in the writ petitioner bank. He was dismissed from service. The order of retrenchment was questioned by the second respondent by filing an appeal under Section 41(2) of the Tamilnadu Shops and Establishments Act before the first respondent herein. The appeal was allowed by order dated 28.12.2007. The appellate authority setaside the dismissal order against the second respondent herein. The same is challenged in this writ petition.

2.Heard the learned counsel on either side.

3.The counsel appearing for the writ petitioner pointed out that the petitioner is situated in Vadugambadi village. It is a minor panchayat. According to him, the provisions of the Tamilnadu Shops and establishments Act, 1947 have not been made applicable to the panchayat in question. Therefore, he would submit that the order impugned in this writ petition will have to be set aside as it is lacking in jurisdiction.

4.The issue on hand is no longer res integra. It is covered by the decision of the Hon-ble Division Bench reported in 2007 (2) MLJ 461 in the case of Management of Akkur Primary Agricultural Co~operative Bank Ltd., Akkur, rep. by its Special Officer, Nagapattinam District. Vs. Gnanasekaran and another. The Hon-ble Division Bench held as follows:
?9.Therefore, the issue that should be decided is whether the Act applies to the Appellant~Society, which is situated in Akkur Panchayat. It is, in this context, relevant to refer to Section 51 of the Shops Act, which is extracted below:
?Section 51. Commissioner of Labour to decide certain questions: If any question arises, whether all or any of the provisions of this Act apply to an establishment or to a person employed therein or whether Section 50 applies to any case or not, it shall be decided by the Commissioner of Labour and his decision thereon shall be final and shall not be liable to be questioned in any Court of law.?

10.As it is the only point loomed around to be decided, we directed the learned Government Pleader to refer the matter to theopinion of theh Commissioner of Labour, who is the Authority under this Act to decide the applicability of the said Act to any other institution and passed an order dated 3.11.2006, which is as follows:
?Let Commissioner of Labour file an affidavit on the following aspects:
1.Whether the Akkur Panchayat is a Major Panchayat or a Class I Panchayat in terms of Section 1(3)(iii) of the Tamil nadu Shops and Establishments Act, 1947?
2.If the said Panchayat is nto a Major Panchayat or not classified as Class I Panchayat, whether the Panchayat has been notified under Section 1(3)(b) of the above said Act?
3.Whether the provisions of the Tamil Nadu Shops and Establishments Act are applicable to the Akkur Panchayat??

11.Pursuant to our direction, the Commissioner of Labour had filed an affidavit dated 15.11.2006 wherein it is stated as follows:
?3.For the above queries, I submit as follows:

a. The Akkur Panchayat is a Village Panchayat.
b. The Notification under Section 1(3)(iii)(b) of the TamilNadu Shops and Establishments Act has not been issued, notifying that the provisions of Tamil Nadu Shops and Establishments Act are applicable to the said Akkur Panchayat.
c. The provisions of the Tamil Nadu Shops and Establishments Act are not applicable to the said Akkur Panchayat.?

12.After the authoritative statement is made by the competent Authority under the Act, there is very little that could be argued by the learned counsels on both sides. However,Mr.K.Kumar, learned senior counsel appearing for the first respondent argued that on the basis of the Notification issued under Section 6 of the Shops Act, theh Act will apply to the appellant~ Society. We are unable to agree with the said submission. When the intention of the Legislature is to apply the provisions of the Act on a stage by stage basis, firstly to the Corporations in the State and thereafter to all the Municipalities and only thereafter, to the Panchayats, which were notified as Major Panchayats under the Madras Village Panchayats Act, 1950 and also reserved further power to notify to any other area by a specific notification, we cannot agree with the submission made by the learned senior counsel appearing for the first respondent that the Notification issued under Section 6 will be equated to a Notification under Section 1(3)(b) of the Shops Act. Unfortunately, this issue has not been properly dealt with by the second respondent Appellate Authority as well as by the learned single Judge, which forced this Court to exercise such a power as the issue related to jurisdiction.

13.In view of the fact that the Act does not apply to the Akkur Panchayat wherein the appellant~Society is situated, the writ appeal shall stand allowed and the order passed by the second respondent dated 7.5.2001, confirmed by the learned Judge vide order dated 28.06.2006 in the writ petition, is hereby set aside. In view of the fact that the writ appeal is allowed, it is open to the first respondent to work out his remedy in accordance with law, by making appropriate petition before appropriate forum. Consequently, M.P.No.1 of 2006 will stand closed. However, the parties are allowed to beat their own costs.?

5.The said decision was followed by the Hon-ble Division Bench of the Madurai Bench also vide order dated 01.08.2017 in W.P.(MD)No.1632 of 2011.

6.The learned counsel appearing for the second respondent pointed out that the earlier decision of the Hon-ble Division Bench calls for reconsideration as certain points were not projected for consideration. But then, as a Single Judge I am bound by the aforesaid Hon-ble Division Bench decision.

7.Therefore, the order impugned in this writ petition is setaside. However, it is made clear that the order allowing the writ petition will not bar the rights of the employee to question the order of retrenchment passed by the petitioner herein in the manner known to law.

8. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

To

The Presiding Officer,
Deputy Commissioner Labour,
Dindigul.